

# What Does Forgiveness Mean Anyway?

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“Historic” was the word on everyone’s lips after Angela Merkel’s plea for forgiveness for the epic “April fool’s day” clusterf\*\*\* she and the state PMs had put on display earlier this week, when they first announced a shutdown of sorts over the Easter holidays only to realize hours later that actually the whole plan didn’t hold water legally. The Chancellor’s show of penitence was for the history books – but why, and what exactly about it? Certainly, you don’t have heads of government admitting to mistakes so candidly every day, but political apologies are not unheard of, like in [France](#) these days, and in terms of political logic can even make sense as a shrewd move to retain power. The shock that Merkel’s apology has triggered in the German public seems to me to be related to the fact that it cannot be divided without remainder by mere political cleverness. There is more to this. What is it?

The Chancellor has explicitly taken responsibility for something she didn’t bear the fault for alone, but she is the Chancellor and as such responsible for everything. [The buck stops here](#), a legendary sign on Harry Truman’s desk used to say: He can’t pass on the responsibility for dropping nuclear bombs and other collectively binding decisions to anyone else, that’s what he is President for. Germany is, unlike the USA, a parliamentary and not a presidential democracy, and if you take the Basic Law at its word, there ought to be a place or two outside the Chancellor’s Office where the afore-mentioned buck might stop occasionally, too. But de facto it hardly ever does (any more) in the Germany of 2021, so Angela Merkel is effectively right about that. So that’s not it.

She has not only taken responsibility, though, she has asked for forgiveness. To do that means that you owe, that you are indebted and ask to be released from your debt. What does Angela Merkel owe, and to whom?

*Ich will Deutschland dienen*: “I want to serve Germany” is one of her best-known and most popular sentences, uttered for the first and not the last time on 30 May 2005, the day the CDU and CSU parties chose her as their candidate for chancellor. With this sentence, she describes her job as a relationship of employment: What she owes is her labour. She toils in the service of her master, to increase his wealth and to fulfil his will. That is what she owes, and if she fails and the employer is dissatisfied with her, then she has to stand up for it and ask for forgiveness.

The sentence sounds honest and humble and has earned her a lot of sympathy, especially in contrast to the many in her party and others who seem hardly prepared to serve anyone but themselves. It also sounds pleasantly non-authoritarian: she does not rule – she serves. She serves Germany, that is, us Germans, the citizens of this state, which also sounds very democratic. But that is not true.

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**Bewerbungsfrist ist der 31. März 2021.** Mehr Informationen finden Sie [hier](#).

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The sentence does not add up. Not for a Federal Chancellor of Germany. She does not owe her labour. She is not a servant, civil or else. She is the determiner of the guidelines of federal policy. That's what it says in her job description in Article 65 of the Basic Law: she determines the guidelines of policy and bears responsibility for them. That is what she owes. Translated into the categories of civil contract law, she owes delivery and not effort. She owes a federal policy determined by her guidelines. That is what she has to deliver. And if she fails to do so and asks for forgiveness for it, then that does not come across so much as an acceptance of responsibility, but rather as a desire to be absolved of it. This has become apparent this week and seems to me to be the explanation for the fact that this sorry episode on the last mile of her term in office has caused such a shock in Germany.

In a democratic constitutional order, there are legal procedures and institutions in place that keep it possible to hold different opinions and want different things and still arrive at collectively binding decisions. After a year of Covid crisis, it

seems, we realise that it looks like we can no longer rely on reaching collectively binding decisions at all any more. More and more people are prepared to tell the constitutional authorities to get lost, who are you anyway, these are your procedures and institutions and not ours, and your collectively binding decisions are not binding at all, not to us at least, and thus not even decisions really but just some silly pompous fidgeting around. This has the effect of a self-fulfilling prophecy. Two or three years ago it was just a few crackpot *Reichsbürger*, today there are tens of thousands who are eagerly turning this prophecy into reality one *Querdenker* manifestation at a time, and they seem to become more and more numerous every day. No one adheres to norms which no one appears to adhere to, certainly not in a pandemic. In the face of the imminent Easter infection wave, it seems that the Chancellor and the prime ministers have run out of things they thought they could sufficiently rely on to be accepted as binding. And what they came up with instead then did indeed bear some conspicuous resemblance with silly fidgeting around, didn't it?

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### **Zwei Stellenausschreibungen: Grant Manager und WiMi**



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Die Universität Duisburg-Essen hat zwei Stellen am Standort Freie Universität Berlin, Campus Lankwitz ausgeschrieben.

Gesucht wird zum einen **ein/e Grant Writer/Manager (w/m/d)** (Entgeltgruppe 11 TV-L). Nähere Informationen finden sich [hier](#).

Zudem gibt es eine Stelle als **wissenschaftliche/r Mitarbeiter/in (w/m/d)** (Entgeltgruppe 13 TV-L) im Bereich der Wissenschaftskommunikation. Nähere Informationen finden sich [hier](#).

Bewerbungsfrist ist für beide Stellen der **13. April 2021**.

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This is not a moral or intellectual failure of fallible men and women in need of forgiveness. This is a tragedy. The tragedy not least of a chancellor who wanted to serve Germany but was never really interested in the conditions of the possibility of collectively binding decisions among diverse people. That, remember, is unforgivable: The buck stops here.

## The week on Verfassungsblog

An application for an interim injunction is pending before the German Federal Constitutional Court against the Own Resources Ratification Act and, behind it, against the EU's **Corona Reconstruction Fund**. This afternoon, the Karlsruhe court issued a interim injunction within the interim injunction, so to speak, against the Federal President so that he does not certify the law, thus creating a fait accompli, until a decision on the interim injunction is made. This is unusual because usually these matters are dealt with between the two constitutional bodies informally and at the working level. A formal "suspension decision" of this kind is highly unusual. I called the Office of the Federal President to ask how this went, and indeed, there was an informal request from the court which "was not turned down", a spokeswoman told me. "The Federal President and the Office of the Federal President have taken note of the additional decision of the Federal Constitutional Court today." Strictly speaking, not turned down does not mean accepted either. Either way: something is up between the Federal President and the Federal Constitutional Court, and it will be exciting to find out what exactly.

Meanwhile, [MATTHIAS KOTTMANN](#) explains why the application for interim legal protection against the Reconstruction Fund would be legally futile.

In the dispute over the **Astra-Zeneca vaccine** with the ex-member state UK, the EU's so-called "export ban" has been met with quite a lot of indignation in Great Britain. Is this illegal or even against the rule of law? No, argues [GEORGE PERETZ](#), but that doesn't mean that the EU's approach isn't a bad idea politically.

In **Israel**, the government wants to use military surveillance technology to track contact persons of Covid-infected people. The Supreme Court has approved this in principle, but in detail it has done much to rein the government in, reports [TAMAR HOSTOVSKY BRANDES](#).

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## Volljurist\*in für Europarecht/Staatsrecht/Völkerrecht



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Die ausführliche Stellenausschreibung finden Sie unter [www.bundesbank.de/content/851402](http://www.bundesbank.de/content/851402). Wir freuen uns auf Ihre Online-Bewerbung bis zum **11. April 2021** unter Angabe der Kennziffer 2021\_0227\_02.

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*Reichskriegsflaggen*, the black-white-red flag of imperial times, have been spotted on Covid demonstrations and caused a debate on banning these flags which are widely used as a legal means of right-wing extremists to express their disdain for the Federal Republic's democratic system. Symbolic continuities do not lose their explosive power, not least when it comes to national flags. In many cases, therefore, symbols need to be developed further, says [JÖRG PHILIPP TERHECHTE](#), who also has an idea of what this might look like in the case of the **German national flag**.

The independence of courts is in danger in Europe as well as in South America. [MARIE-CHRISTINE FUCHS and JENNY ZAMORA](#) show what the **European Court of Human Rights and the Inter-American Court of Human Rights** can learn from each other.

In **Ecuador**, at least 79 people were killed in prison riots. Shortly after, the Constitutional Court issued a decision that clearly identifies the systemic failure, highlighting both the possibilities and limits of transformative constitutionalism, write [CLARA BURBANO HERRERA and GUSTAVO PRIETO](#).

In **Portugal**, parliament decriminalised active euthanasia and assisted suicide in certain cases in January. The Portuguese Constitutional Court has now stopped the law, while keeping the door open for an amended version, reports [TERESA VIOLANTE](#).

In **France**, the government is pleading before the *Conseil d'État* not to follow an ECJ ruling on data retention because it allegedly violates France's constitutional identity. [DAVID PRESSLEIN](#) comments on a case that could deal another blow to the primacy of EU law.

**Turkey** has withdrawn from the Istanbul Convention on Violence against Women on 20 March. [AY#EGÜL KULA](#) explains why this decision is not only a bitter constitutional setback, but a further usurpation by President Erdogan of legislative powers he is not entitled to.

In the **UK**, the Tory government is considering whether private streaming providers like Netflix could be required to distribute BBC public service content. [LENNART LAUDE](#) examines whether and to what extent such a regulation would be possible at all under (constitutional) law in Germany.

Decisions that restrict the free flow of information do not belong in private hands. But it is precisely such decisions that will be made in future by the **"Clearing House for Copyright on the Internet"** regarding the blocking of certain websites. [JULIA REDA](#) and [JOSCHKA SELINGER](#) show how private blocking without a court order undermines the rule of law.

Last week we had a [live discussion](#) with politicians, journalists and academics about the role of constitutional lawyers as experts in the political arena. Next week we will continue the debate with an online symposium with contributions from OLIVER LEPSIUS, ANDREAS BUSCH, ISABEL FEICHTNER, FRIEDHELM HASE, ANNA-BETTINA KAISER, MATTHIAS JESTAEDT and others.

That's it for this week. Do you already have one of our "Hold on to the Constitution" mugs? No? No problem at all, you can get one [here](#).

All the best to you, thank you and see you next week,

Max Steinbeis

